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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Beatrice Denise Welsh,

13 Defendant.
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No. CR-16-00325-PHX-DLR

ORDER

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16 After a four-day jury trial, Defendant was found guilty of assault resulting in
17 serious bodily injury in violation of 18 U.S.C. §§ 1153 and 113(a)(6). (Docs. 108, 109.)
18 Defendant has filed a motion for judgment of acquittal pursuant to Rule 29 of the Federal
19 Rules of Criminal Procedure. (Doc. 122.) The Government has filed a response (Doc.
20 124). No reply has been filed and the time for submitting one has passed.

21 Evidence at trial showed that Defendant was operating her 1995 GMC Sierra
22 pickup truck on October 8, 2014, with Marcia Lopez as a passenger in the cab of the
23 truck. Lopez, not seat-belted, was sitting with her back to the passenger door with the
24 window rolled down. Because Defendant was aware that her right front brake was
25 leaking fluid, she chose to drive the back, unpaved roads to their destination. Evidence
26 further showed that as Defendant attempted to make a turn on the gravel road, at a speed
27 between 53 and 58 miles per hour, she lost control, the vehicle rolled, and Lopez was
28 ejected, sustaining a serious spinal injury which left her paralyzed from the neck down.

1 Examination of the accident scene revealed late steering input and no evidence of braking
2 before the truck encountered a berm which caused it to roll. There was evidence that
3 Defendant had been drinking prior to driving and smelled of alcohol at the scene of the
4 accident, but her blood was not drawn until seven hours later and at that time her BAC
5 was zero.

6 After the jury has returned a guilty verdict, the district court may set aside the
7 verdict and enter an acquittal under Rule 29(c) only if it concludes that no rational fact-
8 finder could, beyond a reasonable doubt, find against the defendant. In making this
9 assessment, the court may not substitute its own inferences for those of the jury. *United*
10 *States v. Gil*, 58 F.3d 1414, 1423 (9th Cir. 1995). When the sufficiency of evidence is
11 challenged, the court must view the evidence in the light most favorable to upholding the
12 verdict and determine if any rational trier of fact could have found the essential elements
13 of the crime beyond a reasonable doubt. *Id.* at 1461.

14 Defendant's motion challenges the sufficiency of the evidence supporting one
15 element of the offense: that she acted recklessly. The term "recklessly" was defined,
16 without objection, for the jury as follows:

17 An act is done recklessly if the defendant was aware of a substantial and
18 unjustifiable risk and she consciously disregarded that risk. The risk must
19 be of such a nature and degree that, considering the nature and purpose of
20 the defendant's conduct and the circumstances known to her, its disregard
21 involves a gross deviation from the standard of conduct that a law-abiding
22 person would observe in the defendant's situation.

23 Defendant contends that there was insufficient evidence for rational fact finders to
24 find beyond a reasonable doubt that she was aware of the substantial and unjustified risk
25 that she encountered as she attempted her turn. Defendant argues that although she knew
26 she had a brake leak, she was not aware that the leak could cause the brakes to fail.

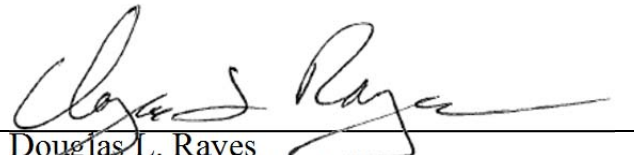
27 The Court finds that under all the circumstances, a rational fact-finder could find
28 against Defendant. The evidence of Defendant's speed of more than 50 miles per hour,
on a gravel road while executing a turn was by itself sufficient evidence of a substantial
and unjustifiable risk which Defendant unjustifiably disregarded. With the additional fact

1 of her knowledge of the leaky front brake, there is no room for argument about the
2 sufficiency of the evidence. The fact that her brakes allegedly had not failed before,
3 despite her knowledge that they leaked, does not diminish the strength of the evidence. It
4 is common knowledge that loss of brake fluid can cause brakes to fail, and Defendant
5 herself shared in this knowledge as took the back roads due to her faulty brake.

6 Construing the evidence in the light most favorable to the Government, as required
7 on the present motion, Court cannot conclude that no rational trier of fact could have
8 found beyond a reasonable doubt that Defendant acted recklessly.

9 **IT IS ORDERED** that Defendant's motion for judgment of acquittal (Doc. 122)
10 is **DENIED**.

11 Dated this 16th day of June, 2017.

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16 Douglas L. Rayes
17 United States District Judge
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